MAR 27 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1002

ELIAS BRAILAS,

Petitioner,

vs.

SHEPARD STEAMSHIP COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

JACOB RASSNER,
Counsel for Petitioner.

GEORGE J. ENGELMAN,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1945.

ELIAS BRAILAS,
Plaintiff-Appellant,

AGAINST

SHEPARD STEAMSHIP COMPANY,
Defendant-Appellee.

No. .....

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully prays for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Second Circuit in the above case.

Opinion of the Court Below.

The opinion of the United States Circuit Court of Appeals for the Second Circuit is to be found reported in 1946, A. M. C. 51. (R220)

Statement of Jurisdiction.

The jurisdiction of the United States District Court is based on Section 24 of the Judicial Code. Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of Congress of February 13, 1925 (U. S. C., Title 28, Section 347).

The judgment to be reviewed was filed on December 27, 1945. (R223)

The Statute Involved.

The statute involved is 46 U. S. C. A. Sec. 688, commonly known as the Jones Act.

The construction of this Act with reference to officers of the vessel, is a question of general importance to every shipowner, operator and ship's officer.

Assignment of Errors.

The Circuit Court of Appeals for the Second Circuit erred in refusing to extend the benefits of the provisions of the Jones Act to a ship's officer, injured in the service of the vessel, through the fault of a subordinate fellow seaman.

The Circuit Court of Appeals for the Second Circuit erred in sustaining the Trial Court in its refusal to submit this question for the jury's determination, curtailing the provisions of the Jones Act and denying the benefits thereof to a ship's officer injured in the service of the vessel.

Summary Statement of the Matter Involved.

Elias Brailas, former chief engineer of the *S.S. Lot Whitcomb,* a vessel owned by the United States of America, operated by Shepard Steamship Company as General Agent for the War Shipping Administration, petitions this Court to review a judgment of the Circuit Court of Appeals for the Second Circuit affirming a judgment of the United States District Court for the Southern District of New York entered on a jury's verdict in an action predicated on the Jones Act.

The Facts.

Brailas was stabbed by his 1st assistant engineer during an argument aboard the aforesaid vessel on the 21st

day of January, 1944, while the vessel was maneuvering for anchorage at Suez.

During the argument a danger signal or full speed bell came in via telegraph. The 1st assistant engineer, Dolanides, was in charge of the engine room. Brailas was dissatisfied with the fact that Dolanides did not respond promptly to the signal and took the throttle away from him pushing Dolanides aside. Dolanides picked up a scraper and stabbed Brailas in the back in order to regain control of the throttle.

The Lower Court held:

1. That the stabbing was not done in the course of the ship's business.

2. That a shipowner is not responsible for injuries inflicted by the stabbing of a superior by an inferior aboard a vessel.

The Questions of Law.

1. Whether an injury suffered through a stabbing in an argument over who should handle the throttle of a vessel in response to a danger signal is a personal dispute or one in the furtherance of the ship's business.

2. Whether a chief engineer stabbed by his assistant engineer is to be considered as a seaman injured through the fault of a fellow seaman.

3. Whether a ship's officer stabbed during an argument as to who was to take charge of the ship's throttle in response to a danger signal was entitled to the benefits of the *Jones Act*, U. S. C. A. 46, Sec. 688.

Reasons for Allowance of the Writ.

It is of importance to every officer aboard every vessel of the United States to have redress for damages suf-

fered as a result of the wrongful act of one of his subordinates.

It is of importance to every American seaman that the benefits provided by the Jones Act should not be unduly curtailed by our Courts.

It is of importance to every American ship's officer to be assured the same rights under the Jones Act as are accorded any member of the crew, and that no distinction be made as between an officer and a subordinate in applying the Jones Act as to whose wrongful act caused the injury, as held by this Court in the case of:

Warner v. *Goltra*, 293 U. S. 155.

See also

The Balsa, 10 F. 2d, 408;
The Burns Bros., 29 F. 2d 855;
The George, Fed. Cases #5329.

The Lower Court has in effect overruled the decision of this Court in the cases of:

Jamison v. *Encarnacion*, 281 U. S. 635, 50 S. Ct. 440;
Alpha S.S. Corp. v. *Cain*, 281 U. S. 642, 50 S. Ct. 443;
Nelson v. *American-West African Line*, 86 F. 2d 730, c. d. 300 U. S. 665,

wherein the Court held that the word "negligence" as used in the *Jones Act*, U. S. C. A. 46, Sec. 688, must be given a liberal interpretation.

The Lower Court has in effect overruled this Court in refusing to hold that wilful misconduct constituted negligence as held by this Court in the case of *Jamison* v. *Encarnacion, supra*, wherein this Court held on page 641 as follows:

"As unquestionably the employer would be liable if plaintiff's injuries had been caused by mere inadvertence or carelessness on the part of the offending foreman, it would be unreasonable and in conflict with the purpose of Congress to hold that the assault, a much graver breach of duty, was not negligence within the meaning of the Act. *Johnson* v. *Southern Pacific Co., supra* (196 U. S. 1, 17-18); *Schlemer* v. *Buffalo, R. & P. Ry.*, 205 U. S. 1, 9, 10."

The decision of the Court below is contrary to the decisions in the cases of:

Poole v. *Kelley,* 162 Va. 279;
Bolin v. *Chicago, St. P., M. & O. Railway Co.,* 108 Wis. 333, and cases cited;
Peoria Bridge Association v. *Loomis,* 20 Ill. 235, 251;
C. R. I. & P. Ry. Co. v. *Hamler,* 215 Ill. 525, and cases cited:
Mercer v. *Corbin,* 117 Ind. 450;
Nelson v. *American-West African Line, supra.*

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari issue to review the decision below.

Dated, March 21, 1946.

ELIAS BRAILAS,

By: JACOB RASSNER,
Counsel for Petitioner.

GEORGE J. ENGELMAN,
Of Counsel.